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IN THE GENERAL ASSEMBLY OF MARYLAND OF 1929

Report of the Joint Standing Committee of the Senate and House of Delegates of its investigation of the affairs of the Maryland State Roads Commission in pursuance of Joint Resolution No. 2 of the Senate and House, adopted January 23, 1929.

Adopted March 29, 1929

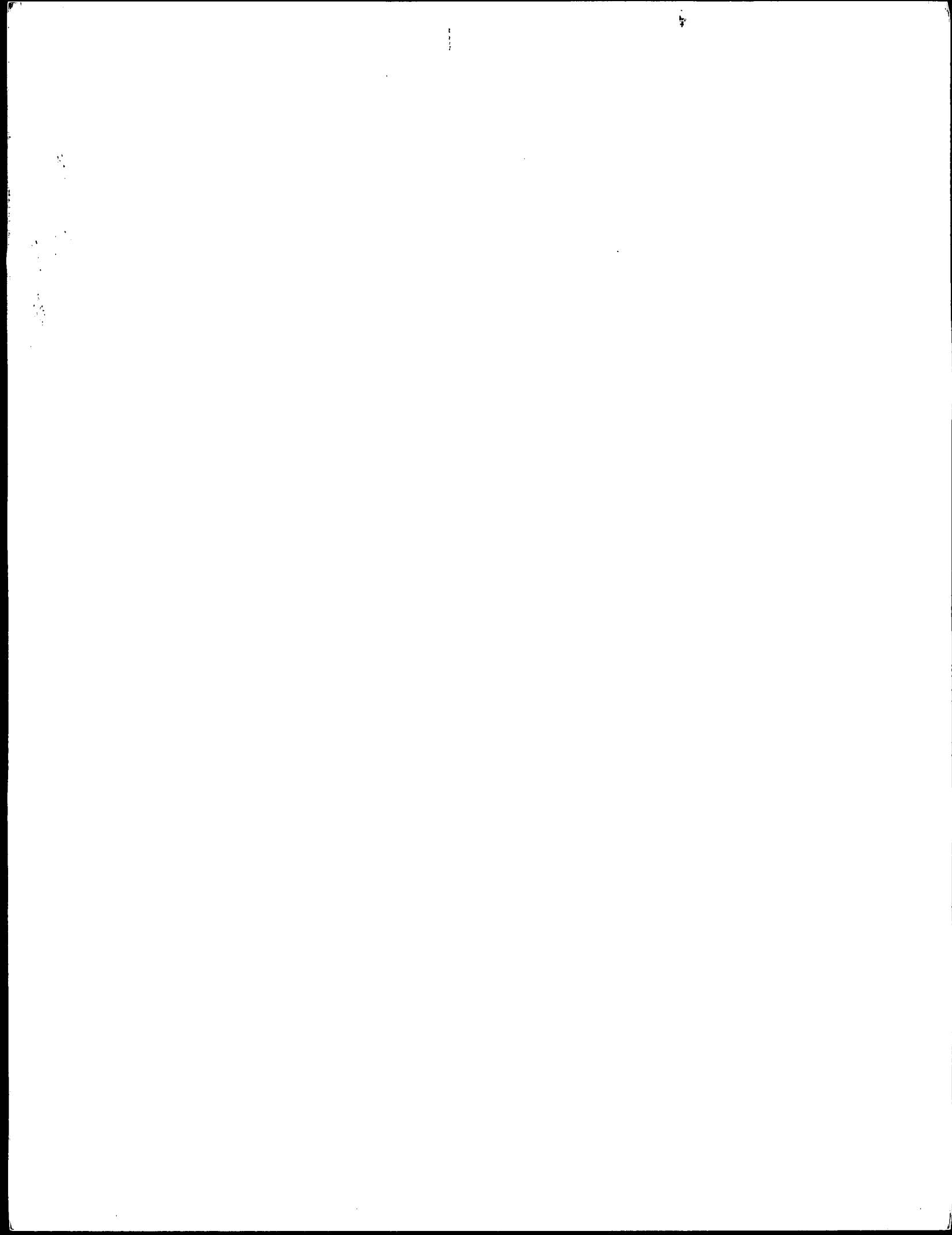
TO THE GENERAL ASSEMBLY OF MARYLAND:

Your Committee, appointed in pursuance of Section 24 of Article 3 of the Constitution, report that in pursuance of the above mentioned Joint Resolution they have held many sessions and have heard the evidence of all available witnesses who they had any reason to think might have any information which would assist the Committee in its investigation, or who desired to appear before them. They have also had the use of the testimony so far taken before the Committee of Investigation appointed by the Governor, and held several joint sessions with that Committee.

Having given full consideration to all of the facts so brought out, your Committee now makes this report of its findings and conclusions.

Preliminary.

In order to fairly judge the work of the State Roads Commission and the conduct of its officers, and particularly to determine the correctness of the charges, many trifling in character, which have been made and given wide publicity during the past year, it is essential to preserve a sense of proportion, keeping in mind



the relation between the total work of the Commission and its officers and the various acts involved in the charges made. During the period under review, from 1920 to 1928, the Roads Commission has spent approximately seventy million dollars or nearly ten million dollars annually.

The Commission's work in general consists of determining the various roads projects, making the proper surveys and locations, preparing plans and specifications for the road sections, advertising and letting of contracts, directing, supervising and checking the work of the contractors so as to assure fulfillment, and finally making the final estimates and the payment. In addition to this the Commission directs the repair and maintenance of the entire road system of the State. During the period 1920 to 1928 it built about twelve hundred miles of roads; it has the direction of repair and maintenance of about twenty eight hundred miles; the roads are built in separate sections and as many as 125 separate sections of road building projects scattered throughout the various counties have been completed in a single year. The total annual expenditures as above stated amount to approximately ten million dollars.

The number of separate vouchers passing through the accounts each year is estimated at approximately seventy thousand, many of course for small amounts. The testimony showed that over five hundred thousand separate checks had been examined by the accountants in the course of their investigation.

The work of the Commission is carried on in every part of the State, which is divided into seven districts, each under the immediate supervision of a District Engineer. Its office and engineering force comprises about sixty-five employees, and it usually has a force of about two hundred and twenty-five inspectors, five hundred patrolmen and foremen, and over one thousand laborers and truck drivers.

Extensive Peculations by Employees.

This is a subject which has been quite fully investigated by the Committee appointed by the Governor, before this Committee took up the matter; and more especially by the firm of expert accountants employed for that purpose, Haskins & Sells, whose report and audit were availed of by this Committee. Nevertheless considerable time was devoted to the investigation of these matters, both because of their own importance, and because they have been made the basis of indefinite charges that those "higher up" must have been involved in or cognizant of so much dishonesty among the office employees.

With the possible exception of further instances of dishonesty by such employees in the disposition of the large stock of war materials turned over to the Commission by the Government, we find no reason to believe that the very thorough and exhaustive audit and examination made by Haskins & Sells has not brought to light substantially all of these transactions during the period covered by their examination.

The system by which such extensive and long continued peculations were carried out has been quite fully described in the report of the Accountants, Haskins & Sells, showing that the numerous dishonest transactions brought to light extend over a period of seven and one-half years and aggregate \$376,138.77. These include 1594 transactions aggregating \$259,388, consisting of fictitious or falsified entries, forged checks and monies stolen under the guise of "salary advances"; and the balance of \$116,752 represents numerous cases of padded or falsified payrolls. For these defalcations thirteen employees of the Commission and four outsiders were indicted; eleven confessed and pleaded guilty, two have been convicted after trial, two have been acquitted and two cases still remain open. But as all of this has been very fully investigated and prosecuted, by the Governor's Committee and by the State's Attorney of Baltimore City, your Committee, so far as this part of the situation is concerned, has directed its attention rather to the consideration of how so extensive a system of thievery could arise and continue for so long undiscovered, and the general charges made that those "higher up" were in some way involved, whether by direct knowledge or participation, or by neglect.

Office System of the Commission.

The office system of the Commission was of course designed to prevent such dishonesty, and was on the whole well designed for *that* purpose, although in practice it failed to give protection in the present case.

The larger or general funds of the Commission were kept in accounts which were not subject to any checks of the office employees. No evidence and no suggestion of any embezzlements of these general funds has been brought to the attention of your Committee; and in this connection it is not inappropriate to observe that the total funds which have passed through the Commission during the period in question aggregate over seventy million dollars; of which the amount misappropriated by employees in these dishonest transactions is about one-half of one per cent, or between one and one-half per cent and two per cent of the money passing through the "Revolving Fund", approximately \$20,000⁵⁰⁰. We need hardly say that this furnishes no excuse for anyone who in any way, by direct act or by negligence, contributed to the misappropriation of the amounts stolen; it is, however, a fact proper to be considered in dealing with the situation as a whole.

Revolving Fund.

The ordinary disbursements of the office, which were very numerous and considerable (as is apparent from the fact that over five hundred thousand checks and vouchers were examined by Haskins & Sells), were provided for out of a special account, or what was known as a "revolving fund." Fifty thousand dollars was deposited in a special account or accounts, subject to checks signed by certain office employees. For these checks vouchers with the approval of certain office employees and officials were required. As the revolving fund became depleted, it was replenished from time

to time by checks drawn on the general funds by the Chairman of the Commission, who in so doing acted upon the certificate of the auditor, or "head account clerk", of the Commission; who in so certifying passed upon the vouchers supporting all of the withdrawals from the revolving fund which such check was intended to reimburse the fund for, or make good. The accounts and vouchers of the office were also subject to the periodical visits and auditing of the State Auditor's Department.

Why this System Failed.

All systems are ultimately dependent upon men, and the utmost that they can accomplish is to increase the number of those whose dishonest participation or negligence must concur to make thefts possible or prevent or postpone their discovery. Your Committee finds that such extensive and long continued dishonesty was possible in the present case due to two such causes, viz:

1. The dishonest combination or concurrence of a number of the employees in such thefts.
2. The failure of those charged with the duty of auditing to properly discharge their functions.

Number of Employees Involved.

The head of the office force was the office manager and purchasing agent. That position was filled by McAvoy throughout the period in question until about the middle of 1927, when he was succeeded by Butler, who had during McAvoy's illness been acting as purchasing agent. These extensive stealings began and grew to

large volume while McAvoy was the office head, and were continued after Butler succeeded him. Six office men, and about an equal number outside, were involved; and the number principally engaged enabled them to put many of their transactions in forms that were difficult of detection by others.

Failure to properly audit.

While many of these transactions were so arranged and concealed that they would have been difficult of detection even by a thorough audit, yet others were of such a nature that it is impossible to believe that any sufficient examination of the vouchers supporting them would not have at once apprised any auditor that something was wrong. We might mention, in this connection, the three advances or overdrafts of five hundred dollars each, made to or by Butler, within thirty days, and the fact that such "advances" to Butler exceeded \$11,000 in the two years 1926-1927, while his salary was at no time over three hundred dollars a month. Dawson was the Auditor of the office, charged with the duty of auditing these payments when reimbursement was to be made out of the general funds; and the most favorable construction that we can put upon the evidence is that he must have approved vouchers without examining the inside of them, or making any effort to see what they were for.

Auditor Carroll, of the State Auditing Department, by whom these shortages were first discovered, testified that he was at once put on notice that something was wrong, as soon as he saw the

vouchers, and that any efficient or thorough audit should have disclosed that fact. Dawson was a member of the office force and familiar with its personnel, and therefore should have been much better able than Carroll to realize the necessarily dishonest character of many of the transactions reflected in the vouchers which he was supposed to pass on. Carroll also testified that Dawson asked him if he was going to examine each item, stating that if he did so it would take him all the year, to which Carroll replied that he would do so even if it took him two years. (This evidence was produced after Dawson had testified).

We also find that the representative of the State Auditing Department who made the periodical examinations previous to that by Carroll, was guilty of similar if not equal neglect. It was stated, without contradiction, that he said that he did not examine the inside of the vouchers supporting the withdrawals from the general fund. This means that he did not examine the vouchers for withdrawals from the revolving fund, but only the larger vouchers, in which they were folded, for reimbursement out of this general fund; and hence relied upon Dawson's audit of the revolving fund items, without attempting any independent examination or check.

Such an audit therefore constituted no audit of the payments made out of the revolving fund, at all, and it is out of that fund, and not by any payments out of the general fund, that the peculations were made.

Alleged Complicity of those "higher up".

No charge has been made that any part of this stolen money was received, directly or indirectly by those "higher up". For the general charge that any persons "higher up" in any way connived at these dishonest transactions, only one piece of evidence was in any way brought to the attention of your Committee. That was the testimony of Butler, who testified that the Chairman of the Commission knew of many of the salary advances, and had knowingly endorsed or approved several to himself (Butler) which bore what Butler testified to be the initialled approval of the Chairman, Mr. Mackall. This was, as we have said, the only evidence of any witnesses directed or tending to show knowledge on the part of any one "higher up".

It was expressly denied by Mr. Mackall who testified that the initials on the vouchers in question were forgeries. It should be noted in this connection that Butler's counsel, Mr. Tippet, testified that Butler did not tell him, at his first interviews, nor until a considerable time after he had paid him his fee, and after he had seen Mr. Mackall about the possible settlement of their case; that any of these overdrafts were on vouchers bearing Mr. Mackall's signature or endorsement; a statement which if true might have been of essential importance in determining whether Butler was criminally guilty or only civilly liable for the money.

In considering the force to be given to this statement of Butler, it is of course necessary to consider both the probabilities

of the case, and what force, if any, is to be given to such testimony by him. On the one hand it is inherently improbable, if not inconceivable, that Mr. Mackall would have approved or authorized any such salary "advances" to a man whom he certainly had no reason to favor in that way, even if it were supposed that he would have had no scruples in participating in such a dishonest transaction. On the other hand, Butler is a man who confessedly for many years has been living in the habitual, if not daily, practice of dishonesty; constantly committing forgeries, embezzlements and thefts. It is also proven (not only by the evidence of Mr. Mackall but also by that of an agent for the Bonding Company) that Butler admitted or confessed that these initials were forgeries at the time when he made his confession to the Bonding Companies; and that he did so then state was further admitted by Butler himself in his examination before us. He also admitted that he had perjured himself as a witness testifying for the prosecution, since the discovery of these thefts. Where a witness has confessedly been guilty not only of so long a course of crime and deceit, but of perjury against his associates and of previous statements precisely contradictory to the one now made, a point is arrived at where no credit whatever can be given to his testimony; and such, apart from its contradiction and inherent improbability, is the case with respect to his assertion made before this Commission that Mr. Mackall endorsed some of these salary advances, and knew or "must have known" what he was doing when he did so.

The tendency on the part of those who have been engaged in dishonest transactions, to seek to involve others in the same guilt, is so well recognized that it has given rise to a settled principle of law, according to which no man is allowed to be convicted upon the uncorroborated evidence of an accomplice.

The statement that the Chairman or members of the Commission were in any way cognizant of or parties to any of these extensive dishonest transactions of the employees is therefore preposterous.

Whether these Stealings Remained Undiscovered
Because of any Neglect on the part of the
Chairman or Members of the Commission.

It has been suggested or charged that such extensive and long dishonesty on the part of so many of the employees of the Commission, could not have existed without the fault of the Commission itself, or its Chairman. The suggestion has been made in this connection that an individual would not have been defrauded over such length of time, and of such amounts, without sooner becoming aware of it.

We think such a charge is radically unjust both to the Chairman and to the other Members of the Commission. They relied, and were entitled to rely, so long as no facts were brought to their attention which aroused their suspicions, upon the auditing of the accounts by the officials who were charged with that duty; that is to say, in the first instance, and primarily, by the office auditor; and also as we have said by the State Auditing Department. The size and volume of these transactions make no comparison with

an ordinary individual possible; and neither in a state board nor among the directors of a private corporation of large size, is it considered for a moment the duty of directors or of the head of the concern, to undertake to individually check the work of the Auditors. Any one in such a position who undertook to do so, would have no time left for the performance of constructive work.

The Chairman of the Commission, who is also the Chief Engineer of the Commission, manifestly had no time to play the part of an auditor or detective of the work of the office force; nor, in the absence of anything arousing a suspicion of dishonesty in his mind, was it any part of his duty to do so.

Separation of Offices of Chairman
and Chief Engineer.

In our judgment, the situation which gave rise to the present inquiry, shows clearly the advisability of separating the offices of Chairman of the Commission and Chief Engineer, as has been done since the discovery of these dishonest transactions in which so many employees were engaged over so long a period. Combining both offices in one was a mistake, and imposed the heavy duties of both places upon a single individual and made it difficult for any one man, while fully discharging his engineering obligations, to maintain intimate contact with the administrative details of the Commission's affairs, and keep himself informed concerning the business methods and personal habits and manner of living of his immediate inferiors in authority, upon whom he was necessarily compelled to

rely for the preservation of the integrity and honest management of the organization over which he presided. We feel that a State Department which expends money, that now amounts to ten million dollars annually, and is steadily increasing, should be organized, as far as possible, along the same lines which obtain in private undertakings of the same magnitude, and that there should be not only the proper number of subordinate officials, but that these subordinates, if honest and efficient service is to be obtained, should be paid salaries commensurate with the responsibilities imposed upon them. Such increase in salary appropriately made would not only secure and retain a higher type of employee, but would, in our judgment, prove ultimately to be a real economy.

In this connection we feel that if a Commission of three members is to be continued at the head of the State Roads System, each of the members should be paid an appropriate salary and be charged with the assumption and discharge of his full share of the labors and responsibilities incident to the proper management of the State Roads Department. While not desiring to increase salary expenditures unnecessarily we know of no reason why the plan of having three adequately paid commissioners is not just as desirable for the State Roads Department as for the Public Service Commission and the State Industrial Accident Commission, where there has been no difficulty in securing men of high character and ability and where this System has not only proven successful but well nigh indispensable.

Charges of alleged petty dishonesty
against Mackall.

In the written statement prepared by Butler while in jail, and filed with this Committee by Mr. Hall, a number of alleged acts not directly connected with the thefts of the employees were charged against Mr. Mackall. Most of these were either withdrawn or disowned by Butler, in testifying before this or the Governor's Committee or shown to be based on nothing; and we will therefore mention only those which were persisted in.

It was charged that Mr. Mackall had had two expensive thermometers sent to his house, for his personal use, without intending to pay the State Roads Commission for them. The evidence showed that the thermometers in question were two ordinary wall thermometers, of small cost, which were delivered late in the fall of 1927, or a few months before the discovery of the shortages. Mr. Mackall testified that he had instructed that they be charged to him; and that when it was brought to his attention a few months later that this had not been done, and it was intimated that this would be made the basis of a charge against him, he did not then pay for them because of his decision then made to take no steps, until such charges were disposed of, which might be regarded as an attempt to change or conceal any evidence which might be made the basis of such countercharges against him.

Another charge was that Mackall had had top soil put on the lawn of his house without paying for it or its hauling. The evidence showed that such top soil was in many cases useless for road building, and had to be disposed of. Mr. Mackall admitted

that some of it had been put on his lawn on several occasions. We think the charge a trivial one.

It was also charged that he gave away a number of "desk sets" to his friends, costing the Commission thirty-five dollars each. Mr. Mackall testified, and the fact was corroborated by Mr. Carroll from his examination of the records of the Commission, that this charge was based upon a single instance, in which a "desk set" (consisting of pen, stand, etc.,) had been given to Mr. Heffner, a salesman, who had admired the one on Mr. Mackall's desk. Considering the apparently isolated nature of this act, we regard it also as a relatively trivial incident.

While your Committee regards the two incidents last mentioned as trivial, and not such as should furnish any basis for charges, they yet desire to stress the importance of a rigid compliance with all legal requirements and proprieties so that even such minor subjects of criticism may not occur hereafter in connection with anyone holding public office.

The charge as to the construction of the lily pond at Mr. Mackall's home is of a similarly trivial character. The digging and other parts of the work were done by Mr. Mackall personally. The chemist worked with him on one or more Saturdays or half-holiday afternoons, but not during the time he was being paid by the Commission. Mr. Mackall furnished the cement, gravel, &c. and one of the State Roads Commission's concrete mixers and operators set the concrete; for this latter work the engineer was several times asked, but neglected to send a bill for the small cost.

Southern Maryland Society Transactions.

Certain transactions of the Southern Maryland Society, of which organization the Chairman of the Commission was President for a year, were especially made the basis of charges against him by Butler and others.

Certain bills made out against the Southern Maryland Society and addressed to Mr. Mackall were received at the office of the Commission. The bills showed on their face that they were for hire of automobiles, telephone service, etc., furnished to the Southern Maryland Society and that they had nothing to do with the State Roads Commission. Butler (as he testified before the Commission) made out new bills on the forms commonly used by the Commission, falsifying the items so as to read as if they were for different articles properly furnished for the use of the Commission, and paid them by checks drawn on the revolving fund. The original bills showing on their face the true nature of the items, were attached to and filed away with one of the original bills so falsely made out and paid out of the Commission's funds. Butler testified that he did this because Mr. Mackall told him to pay the bills.

Mr. Mackall denied that he had ever done so or that the bills had been brought to his attention by Butler when received.

These transactions constituted, in our opinion, a clear case of an effort by Butler and his confederates to create evidence that would apparently involve Mackall in a dishonest transaction, and which might therefore be of service to him and his confederates

if their own stealings should be discovered. It is inconceivable (1) that if Mr. Mackall were dishonest, his dishonesty would consist in a small speculation of this character committed for the benefit of a Society with which he was connected, or (2) that he would have had carefully filed away, among the records of the Commission, the original voucher showing on its face the changes made by Butler with the intention of fraudulently charging this item against the funds of the Commission.

The bills were paid by the Southern Maryland Society when brought to its attention.

Crain Highway Opening.

The completion of the Crain Highway, the building of which was generally regarded as an important step in the development of the State system of highways, especially for Southern Maryland, was made the occasion of a celebration. Similar but less expensive celebrations were held upon two other occasions; and the fact that the expenses of these "openings" were borne by the State was of course generally known; yet on the whole they met with general approval. The expenses of the Crain Highway Opening were defrayed out of the unexpended balance of the appropriation for that highway; and it was attended by many prominent persons and officials, including many of the Judges of this State.

Notwithstanding the fact that all three of these celebrations or openings seem to have been more generally approved than criticized, prior to the time when the affairs of the State Roads Commission became the special subject of inquiry and criticism due

to the discovery of the dishonesty of so many of its employees, your Committee believes that the law does not authorize such use of the State's money for such purposes without a special appropriation or authorization from the Legislature.

Proposed Gifts of Silverware.

When the Crain Highway celebration was being arranged for, it occurred to those who were arranging its details, that it would be an appropriate feature of the celebration to have memorial gifts of articles of silverware to be paid for with State funds made to the Governor, to Mr. Robert Crain and to the Mayor of Baltimore; and a set of table silver to the Chairman of the Commission. Mr. Mackall admitted that he acquiesced in this arrangement.

The intention was to make these presentations publicly, and as a part of the celebration.

When Mr. Robert Crain learned of this, he protested and advised the Governor, who promptly directed that no such gifts be made. The objects had already been prepared and specially engraved; and the orders were cancelled although the difference between their price and the allowance for their return or rather non-delivery, amounting to about one-half of the total cost, was paid by the Commission and never refunded to it. As to the silver service proposed to be given to Mr. Mackall, the offer was made on behalf of the Southern Maryland Society that several members of that Society would raise the amount required to pay for the silver,

and give it to Mr. Mackall as a present or testimonial from that Society, of which he had been president. The silver was accordingly presented to him at a meeting of the Society held a few months later. Meantime the bill was paid by the Commission with the understanding that it was to be reimbursed by the money which was to be contributed by the proposed donors. A number of months elapsed from the time of this occurrence to the discovery of the frauds in the office of the Commission, during which time the amount had not been refunded. Mr. Mackall's position in respect to this was it may be noted a somewhat delicate one; because if he urged payment, he was demanding payment from those who had agreed to pay the amount as a gift to him. The money was raised and paid by the proposed donors after the affairs of the State Roads Commission had become the subject of public comment and inquiry. It was always carried openly on the books of the Commission as due from the Southern Maryland Society.

Road Contracts of the Commission.

The Commission's methods in awarding contracts for road construction and maintenance have been made the subject of extensive criticism; and of charges more or less general emanating from Butler and others. It was shown that in so far as these criticisms related to the general methods of the Commission, the Commission was proceeding on the lines which had been established under previous administrations. Some brief explanation of those details of the system of contracts which gave rise to such criticism, is necessary for any clear understanding of the charges made.

One charge was that the Commission had paid out large sums as "excess payments" on contracts. It was shown that such excess payments comprised two different items, viz: the so-called "over-run" on contracts and the items of allowance for "extra work".

Overrun.

Overrun is a feature due to the use of the unit base system of bidding, which is practically universal now in the letting of similar contracts. Under the unit base method, the Engineers make a preliminary estimate, which is understood to be an estimate only, of the amount and character of the several kinds of work involved in carrying out the contract; showing for instance the number of cubic yards of excavation of each kind, the amount of concrete, etc. It is understood and stated that these estimates are approximate only; and that the contractor is to be paid on the quantity of each kind of work done, as shown by the final survey or estimate made after the work is done. It is, however, necessary to have some basis for comparing bids and ascertaining which is the lowest, and for fixing the amount of the bond to be given, etc. This is arrived at by figuring out what the cost would be on each unit price bid, by applying such unit prices to the Engineers' preliminary estimate of the total quantities involved. Owing to conservatism and other reasons, such preliminary estimates prove to be in the great majority of cases under-estimates rather than over-

estimates; and it therefore results that when the final survey and payment are made, the amount of work done by the contractor is measurably greater than the amount of the original estimate. This difference constitutes the "overrun", which is in no sense a payment not involved in or contemplated by the contract, and represents in all cases actual work and materials usefully furnished by the contractor in the doing of the job.

Extra Work.

Extra work is a different item. It includes all that work, not provided for in the original estimates, which may become necessary or advisable in carrying out the contract, either because unexpected conditions are met with, or because of changes in the plans and specifications made by the Commission or Engineer. While such extra work is in a sense additional to the contract, the form of contract in use by the Commission and by others provides for the method of determining and allowing payments for such extra work.

A comparison of the amounts and extents of these items, while Mr. Mackall was Chairman of the Commission, with the similar results obtained during the administration of his predecessors in the Commission, showed that the same situation existed and to a proportionately equal amount, in the contracts let during prior administrations.

No Evidence of Favor Shown Contractors In These Items. (Overruns and Extra Work).

The charge was also made that "favored contractors" had been specially favored in respect to these items. A tabulation and

comparison made by Mr. Carroll, the State Auditor, through whom the dishonesty on the part of the employees of the Commission was first brought to light, showed clearly that such was not the case.

Construction and Maintenance.

The road work of the Commission, as a whole, is divided into the two heads of Construction and Maintenance. It has been the policy of the Commission (a policy that was followed under previous administrations) to treat as construction only the original improvement of a road into a part of the State Highway System. When a road has been once so improved, then, generally speaking, all subsequent improvements, whether of widening, adding shoulders, reconstructing, etc., are treated as maintenance. The principal practical effect of this distinction is that only such original construction is paid for out of bond issues; the betterments, reconstruction, etc., classed as maintenance, are provided for out of the gasoline tax and other sources of income. In so far as this classification results in extending and improving the highway system without increasing the bonded debt of the State, it is a conservative step and one that should, we believe, meet with the approval of most people.

The Commission has always regarded maintenance contracts as not coming within the compulsory provision in the Statutes requiring contracts to be advertised before they are awarded. In most cases, however, where a "maintenance" contract involved reconstruction or work similar in its nature to original construction, the Commission has advertised these contracts, in the same way as

contracts for original construction. It is the opinion of your Committee that this course should be followed in all cases where the work for which the contract is let is in the nature of reconstruction or additional construction, or is large in amount. Inasmuch as the funds used for maintenance purposes have already reached large proportions and are constantly increasing, the problem of determining a fair and proper allocation of these funds is a very serious one, and we feel should at the earliest possible date receive the earnest consideration of the proper authorities.

Extensions.

The larger part of the criticism directed against the system of the Roads Commission in letting contracts, has to do with this subject of extensions. It was the practice of the Commission (and was shown to have been equally the practice under previous administrations) to make so-called "informal" contracts (that is to say, contracts not advertised for public bidding) for extensions of sections of a highway on the theory that if the conditions of the work were similar, the spirit of the requirement that the price be established by public bidding, was complied with by letting the contract at the same unit prices; and moreover, there were many cases in which the contractor for a section already let, was necessarily in a position where he could do the work more economically and much more quickly than any other contractor, and, in some cases, the work could not be done by any other contractor

until access was restored by the completion of the work being done on the adjacent section or sections. This, as we have said, was a practice initiated and carried on under previous administrations; and it was followed under Mr. Mackall's chairmanship, until in a case brought before Judge Stanton, in Baltimore, in 1925, it was decided that this practice of informal contracts or extensions was not authorized by the terms of the law governing the State Roads Commission. Since then, the evidence before us showed, the practice has been discontinued, and no further contracts have been let as extensions. The particular case in which this decision was made, arose out of contracts which we are discussing below; and we do not stop to here explain it, as we are first explaining the general features of the Commission's dealings with respect to contracts.

Contracts specially investigated.

The attacks made on the conduct of the Commission and of its Chairman in the letting of contracts, centered in the hearings before your Committee, principally upon some two or three contracts which were selected as being cases especially subject to criticism. While the limits of this report do not permit of any exhaustive discussion of these, yet a brief statement of the facts shown is necessary for a proper understanding of our findings in reference thereto.

Contract for last section of
Crain Highway.

This is a case where the entire section, six and four-tenths

miles in length, was first advertised under plans and specifications which called for a fifteen foot roadway; and bids on that basis were obtained. It was then found that more money was available for the purpose, and it was decided to be advisable to build this section eighteen feet wide.

The added width increased the amount of excavation, paving and other building work by about 20%. The lowest bidder was not prepared to do a larger amount of work that he had originally bid on. The Commission thereupon offered him about five miles of eighteen feet width in place of approximately six miles of fifteen feet width, being substantially equal to the amount of work he bid for. This offer was accepted. This left one mile unprovided for. The next to the last section of the Crain Highway was then being constructed by Christhlf & Ensey. The last five miles had been awarded to the low bidder under this letting. This left about one mile intervening between the two sections under construction. As access could be obtained to this only over the two sections then under construction or about to be constructed, and the bidder for the last section was unable to undertake the work, it was awarded to Christhlf & Ensey, the builders of the other adjacent section, at the same unit prices upon which they had bid for the entire six miles of the last section to be constructed. The low bidder who accepted five miles out of the six declined to proceed, and it was then offered to the next lowest bidder who also declined. The declination was due to the time limit and penalties for delay which were insisted on, and the bidders were doubtful of their ability to complete the work. The third lowest bid-

der then took the contract for the last five miles, and performed it. If the additional one mile had been performed by Christhilf & Ensey not at their bid, but at the bid of the lower bidder who accepted the five miles, it would have reduced the cost of the work by about \$3,000.00.

While your Committee believes that under such circumstances a contract should be readvertised; yet the evidence showed clearly that Mr. Mackall and the Commission were acting for what they believed to be the best interest of the State, and there is nothing to indicate that any loss to the State was caused by their action.

Severn River Bridge Houses.

The Severn River Bridge was being constructed under contract at a total cost of about \$800,000. On each side of the draw there are small houses which were to be constructed on top of the cement work, or hollow tile. One of these was to have installed in it the switchboard and appliances for the control of the machinery to raise and lower the draw. The completion of one of these at least was therefore necessary for the operation of the draw, and the Government would not permit the draw to be lowered and navigation obstructed when the necessary machinery to raise it was not fully installed and in working order. The completion of both houses was of course necessary to the final completion of the bridge.

There were, therefore, urgent reasons for completing these houses promptly. When the bridge was nearing completion bids for

19

the erection of these houses were submitted by a number of Annapolis contractors or builders. The lowest of these was the bid of Mr. Clarence E. Williams of \$5,115.00; and the other bids ranged from \$6,841.00 to \$8,970.00 (excluding one for the apparently excessive amount of \$17,486.00). When the contract was awarded to Mr. Williams he refused to go ahead. Mr. Mackall says that he refused to give the necessary bond; Mr. Williams bases his refusal on the ground that the concrete work of the bridge had not been sufficiently completed to furnish the base on which he was to begin; and that the condition of the bridge was such that he could not obtain reasonable access to the place of work.

The matter seems to have remained open for some time; and finally the Commission gave the contract to Christilf & Ensey, who completed the houses, including the plumbing which was not covered by Williams' bid, and the substitution of a copper for a "lead clad" roof, at a total cost of \$11,286.00.

The justification for the action of the Commission on this occasion, and for the greater cost of the two houses, rests, we think, in the situation at the time.. The cost of these houses was but a very small part of the cost of the bridge; and the completion and use of the bridge itself was being delayed by the delay on these houses. They were promptly finished and the use of the bridge was not delayed. Both former administrations of the Commission, and the recent administration, have always acted upon the

supposition that in cases of emergency they were authorized to make "informal" contracts. That is what was done by the Commission in this case.

Contracts in Charles County.

The situation in Charles County has assumed somewhat of the aspects of a local controversy; and a considerable part of the hearings by your Committee were taken up with statements and evidence relating to the same. One of these items was the particular contract, or two contracts, which gave rise to the suit in Baltimore City, already mentioned, in which it was decided by Judge Stanton that "extensions" were unauthorized by the terms of the Roads Commission Law.

These two contracts were for the construction of a lateral road extending from the main road to the Potomac River in the northwestern portion of Charles County. The westernmost part of this road was regularly advertised and awarded to the lowest bidder as Contract CH 32. Work upon this section was delayed by delay in getting the necessary rights-of-way. Meantime funds for that purpose having become available it was determined to let the eastern part between the main road and Contract No. 32. It was determined to let this as an informal contract or "extension" on the ground that it was impracticable to have two different contractors working at the same time upon the two sections since access to the westernmost one could only be had by using the other; and that the similarity of conditions justified the determination of the cost on

the same unit figures. The contract for this eastern half or CH 33 was therefore let to Swan who moved his machinery up and began work upon it before work could be begun upon the western part or CH 32 owing to the delay in securing the necessary rights-of-way. This constituted perhaps an extreme case of an "extension" as the two sections were of about equal length. We find nothing in the evidence adduced before us, however, to impeach the good faith of Mr. Mackall or of the other Commissioners in making this contract.

Steps were then taken by Mr. Wilmer to contest the validity of this action of the Commission; and suit was brought in Baltimore City where the Commission's office is located, to determine this question. As we have said, it was decided by Judge Stanton that the award of this "extension" contract to Swan without public bidding, was unauthorized by the Roads Commission Law; and the further carrying out of the contract was therefore enjoined. Meantime Swan had completed part of the work on this section; and the contract was then advertised for completion and awarded to Mr. Wilmer, who was the lowest bidder at a price substantially under that at which it had been allotted to Swan.

As we have said the practice of awarding extensions was discontinued by the Commission after this case; but as we have also said, in awarding informal contracts in this manner, they were merely pursuing a course which had been followed from the beginning during previous administrations, and were, in our opinion, acting to the best of their judgment.

Minutes of the Commission.

It was charged that the minutes kept by the Commission showed small participation by the two members other than the Chairman in its activities.

It became evident, however, from the testimony (1) That the minutes did not record all of the discussions and conclusions of the Board, and that the other two members frequently were familiar with and participated in the action of the Chairman, even though the minutes themselves did not so indicate, and (2) that, in spite of these omissions, the recording practice under Mr. Mackall compared favorably with that of his predecessors. The Committee feels, however, that regardless of past practice the utmost care should be exercised hereafter to make the minutes of the Commission inclusive of every action taken officially by the Board and that due reference should also be made therein to all important discussions participated in by the Board, even though not leading at the time to final conclusions. The work of the State Roads Commission is of such far reaching importance, affects so many of our citizens and involves the expenditure of such vast sums of money that its official records should always be scrupulously complete and comprehensive.

Purchases of Supplies.

It was also evident from the Commission's books and from admissions frankly made by Mr. Mackall himself that in many instances

contracts for the purchase of materials and supplies, and even for the improvement of roads, were made by the Chairman individually without the prior authorization of the Board. While there was no testimony to indicate that any of these contracts had been entered into in bad faith or without due regard to public interest, and while it may be almost impossible, from a practical standpoint, to comply with the legal requirement that all purchases involving an expenditure of over fifty dollars be approved by the Commission as a whole (Code Art. 91 Sect. 27); nevertheless, we feel that the making of purchases or letting of any other contracts involving any considerable sum of money should hereafter receive the prior endorsement of the Board. The law, in creating a Commission of three members, to control and direct the State Highway System, contemplated affirmative and intelligent action by the Commission on all matters affecting that system, except where necessary delegations of authority could legally be made, and even though the action of a single member is subsequently ratified through the payment of contracted bills, as apparently was done, in every case brought specifically to our attention, we feel that these delayed ratifications cannot replace and were never intended to replace prior authorizations given after careful investigation and discussion.

Special criticism was directed to the fact that purchases had been made of reflecting road signs to a large amount without bidding or competition; and that a special proprietary material

called Ugite had been purchased in large quantities for patching the roads, in a similar way. These, it should be noted, were items which came under the classification of maintenance and not of construction, and were therefore not regarded as being within the compulsory statutory requirement of advertisement and bidding. The reflecting signs in question were moreover a patented article, and the road patching material a proprietary blend or article which could be obtained only from the makers. We do not understand that provisions requiring purchase by public bidding prevent the purchase of articles of this character, for which there is only one furnisher, and consequently no possibility of competition by bidders; and we believe the choice and use of such things to be properly an engineering question, when made within the limits of good faith, as was clearly done in these cases.

War Material.

A large amount of material which had been purchased by the Government for use in the conduct of the war was from time to time turned over to the State Roads Commission, in pursuance of the policy adopted by the Government of making this distribution of the large mass of machinery, stores, etc., which it had accumulated, and which were no longer needed. These were allotted among the several states in accordance with rules adopted for that purpose by the Department in charge; and Maryland received its share.

No attempt to put an actual value on the material so delivered was made by the Government; but merely arbitrary figures were

used based on taking off a fixed percentage according to whether the articles were unused or used. Some of them had been to France, others had been located at storage points in this country. Their condition varied very much, some proved to be quite useful in the prosecution of road work, others were not adapted for that purpose or their age or condition was such as to make them practically useless.

The Government Regulations allowed certain dispositions to be made of the articles so given; and many for which it had no use were distributed among the different counties, state institutions, etc., by the Commission.

Complete lists of all goods received from the Government were on file at the Commission's office but no adequate system of checking and following these goods was ever established. They were left under the control of Mr. McAvoy, the Commission's Purchasing Agent and Supervisor of its warehouses, and as a result of his irregularities and those of his successor, much of this war material was undoubtedly stolen. There was no testimony showing that this result was due directly to any lack of duty on the part of Mackall and the other Commissioners except for any possible failure on their part to hold the actual custodian to a more rigid accountability and keep themselves more fully advised as to the whereabouts and distribution of this material.

Hearsay testimony was adduced before us to the effect that Mr. Parker the District Engineer in charge at Marlboro, had given

a caterpillar tractor to a contractor, Swan; and further evidence by the same witness to the effect that the tractor was of service for a considerable period thereafter. Any such action was unknown to the Chief Engineer of the Commission, and it was without their authority, if it was done. Parker is dead, and in the present situation the evidence against him being hearsay merely (though uncontradicted) he is, we think, entitled to the benefit of the doubt as to whether he gave away any valuable property of the Commission.

Uncollected Open Accounts.

The report of Haskins and Sells showed open accounts on the books of the Commission aggregating \$254,354.26. Of this amount, however, considerably more than half was for indebtedness not yet due. The balance consisted of numerous items, dating back to 1920 and earlier; and included also a great many items of almost nominal amount.

Very little effort seems to have been made to collect these accounts, and no lists or statements of them was ever furnished to the Commission. The failure to push in any way the collection of these items is a further illustration of the demoralization of the heads of the office force; and also of the need, which we have already mentioned, of having the office management supervised more closely by a higher officer whose entire time is not fully taken up with other work of the Commission.

Many of these accounts were paid, when brought to the attention of the debtors, and steps are being taken for the collection of such of the others as are collectible. At the time when this matter was under consideration by us, it was stated that the uncollected balance had been reduced to about thirty seven thousand dollars. Some part of this doubtless never was collectible. In any case, it seems that the ultimate loss to the State due to the failure to earlier push the collection of these items will be relatively small.

Charges against Senator Mitchell.

As we have said, the controversy in Charles County assumed the form of a local and somewhat bitter one. Charges were made against Senator Mitchell to the effect that he had used his position as a State Senator to influence the action of the Commission in awarding contracts to Swan, whom he had financed; and in favor of his son who was engaged in the oil and gasoline business at La Plata.

Senator Mitchell admitted without question that he had financed Swan, and that in return for the money lent him, he received a percentage of Swan's profits or earnings in his contracting business. That he had ever in any way sought to influence the action of the State Roads Commission or of its Engineer, in any of their dealings with Swan, was however absolutely denied; and the evidence adduced before us in connection with this controversy, the hearing of which occupied a considerable part of our time, not only failed to establish any appearance of any such action on Senator Mitchell's part but disproved it.

The claim was made by Mr. Wilmer that Senator Mitchell had delayed the performance of contracts in which he, Mr. Wilmer, was interested, by delay in obtaining the rights-of-way for the State Roads Commission. It was, however, conclusively shown that Senator Mitchell was not acting for the Commission in any such matter; and that the only thing that he did in that connection was to advise a client of his, who had been unwilling to give the necessary right-of-way, to do so; as the result of which the necessary consent was given.

As to the oil and gasoline business in which Senator Mitchell's son was first interested and then solely engaged, the evidence showed that the Commission had considered carefully the question whether or not it was advisable for them to establish a gasoline distributing station of their own at La Plata, by which they would have saved the discount allowed on their purchases of gasoline in large quantities, but at the same time would have had to incur the expense of keeping someone in constant charge of the pump or pumps, to prevent the use of the gasoline for improper purposes. The Commission decided, and as far as we can see rightly, that it was more economical and convenient to use local sources of supply, at the retail rates, for both gasoline and oil. All of the gasoline and oil which they purchased from Mr. Mitchell or his former firm was paid for at the usual retail price, and no less was paid by other customers who were larger purchasers; and it was testified that he rendered the Commission unusual services and gave them many facilities in doing this. Occasionally when there was

an immediate need for other articles; such as hardware, etc., which was not carried by Mr. Mitchell's firm, these were likewise furnished by him at the usual price, by his obtaining them from other merchants who allowed him the usual discount between merchants of 10%, which was his only profit on such articles.

Unless we were to hold that it is improper for a son of a State Senator to engage in the oil and gasoline business, or when engaged in such business, to have any dealings with a state agency, there is nothing in these transactions which should be the subject of criticism.

Integrity of the State Roads System.

The amount of the stealings which have been uncovered in the office of the Commission, and the period of time over which they extended, seem to have created in some quarters an impression of doubt as to the integrity and economy of our State Highways System as a whole. Our system of State Highways is the most valuable asset that our State possesses; and any doubt upon this subject is entirely unjustified.

As we have said, the improvements made to the State Highways during the period in question aggregate over seventy million dollars; and the total amount of money stolen is not over one-half of one per cent. of this. However unfortunate it may be that such a system of dishonesty arose and involved so many people, and resulted in such a loss to the State; yet the amount involved has no appreciable effect on the cost of the system as a whole; which would have been

increased to a much greater figure by incapacity or negligence in the performance of the important work of the Chief Engineer.

Mr. MacDonald, the Chief of the Bureau of Public Roads, appeared before us and gave important testimony as to the manner in which the work of the State Roads Commission has been carried out. He is a Road Engineer of eminence; and his position, in charge of the administration of the Federal law by which the Government contributes part of the cost of building state roads, and closely oversees the work and expenditures upon such parts as it so goes in partnership, so to speak, with the State for the construction of, has brought him into contact with the state roads systems of the other different states, and given him unusual opportunities for judging how effectively such work is carried on. He gave unstinted praise to our system, and to the methods adopted by our Commission under the leadership of Mr. Mackall and said that our present system, both in excellence and economy, constituted a "splendid service to the State"; and no one who heard his testimony, or reads it, could have any doubt as to the sincerity and force of the views which he so expressed.

Mr. Greiner, a prominent bridge engineer, who acted as consultant on Mr. Mackall's plans for the Severn River Bridge and for the remodelling of the Havre de Grace Bridge, also testified before us as to the resourcefulness and unusual skill shown in the designing and carrying out of those structures, and to the large saving to the State due to their unusual design.

Conclusion.

While we have, we believe, in this report omitted nothing of importance which has been brought to our attention, we have not undertaken to give an account of, or summarise all of the points to which our investigation has been, from time to time, directed; and the necessity of having our report complete for presentation to the General Assembly before its final adjournment has made it impossible to discuss the matters covered with any fullness of detail.

The Committee appointed by the Governor has had the time and opportunity for making a much more detailed and extensive investigation of the affairs of the Commission than we could possibly have made; and as we have said, we have had the benefit of the testimony and investigations taken or made by them. Their labors are not yet quite completed, and their report will doubtless cover in much greater detail the matters which we have dealt with.

We have, however, neglected no source of information from which it seemed that any evidence likely to aid us in our investigations could be procured.

RECOMMENDED BY:

Joseph C. France,
Charles McH. Howard,
Alexander Armstrong,
Counsel.

SUBMITTED BY THE JOINT STANDING
COMMITTEE OF THE SENATE AND
HOUSE OF DELEGATES APPOINTED
UNDER ARTICLE 3, SECTION 24, OF
THE CONSTITUTION OF MARYLAND;

ON THE PART OF THE SENATE:

S. Scott Beck, Chairman,
D. J. Ward,
Lansdale G. Sasscer,
Harry O. Levin,
John Parran.

ON THE PART OF THE HOUSE OF
DELEGATES:

Francis P. Curtis,
Fendall Marbury,
Henry L. Morris,
E. Brooke Lee,
Robert S. Harrison,
Robert I. Lednum,
Marshall T. Heaps,
James J. Lindsay, Jr.

